

## MEETING RECORD

**NAME OF GROUP:** PLANNING COMMISSION

**DATE, TIME AND PLACE OF MEETING:** Wednesday, March 3, 2004, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

**MEMBERS IN ATTENDANCE:** Jon Carlson, Eugene Carroll, Gerry Krieser, Roger Larson, Dan Marvin, Mary Bills-Strand, Lynn Sunderman and Tommy Taylor (Melinda Pearson absent); Marvin Krout, Ray Hill, Mike DeKalb, Brian Will, Tom Cajka, Greg Czaplewski, Jean Walker and Teresa McKinstry of the Planning Department; media and other interested citizens.

**STATED PURPOSE OF MEETING:** Regular Planning Commission Meeting

Chair Mary Bills-Strand called the meeting to order and requested a motion approving the minutes for the regular meeting held February 18, 2004. Motion for approval made by Krieser, seconded by Carlson and carried 7-0: Carlson, Carroll, Krieser, Marvin, Bills-Strand, Sunderman and Taylor voting 'yes'; Larson abstaining; Pearson absent.

### **CONSENT AGENDA**

#### **PUBLIC HEARING & ADMINISTRATIVE ACTION BEFORE PLANNING COMMISSION:**

February 18, 2004

Members present: Carlson, Carroll, Krieser, Larson, Marvin, Bills-Strand, Sunderman and Taylor; Pearson absent.

The Consent Agenda consisted of the following items: **CHANGE OF ZONE NO. 04006; SPECIAL PERMIT AMENDMENT NO. 04001; CITY/COUNTY FINAL PLAT NO. 04010, STEVENS CREEK POINTE ADDITION; and WAIVER NO. 04003.**

**Item No. 1.2, Special Permit Amendment No. 04001, and Item No. 1.4, Waiver No. 04003,** were removed from the Consent Agenda and scheduled for separate public hearing.

Taylor moved to approve the remaining Consent Agenda, seconded by Marvin and carried 7-0: Carlson, Carroll, Larson, Marvin, Bills-Strand, Sunderman and Taylor voting 'yes'; Krieser declaring a conflict of interest; Pearson absent.

**SPECIAL PERMIT AMENDMENT NO. 04001**  
**TO INCREASE THE AREA AND ALLOW A LIGHTED**  
**GROUND SIGN, ON PROPERTY GENERALLY**  
**LOCATED AT S. 54<sup>TH</sup> STREET AND SOUTH STREET.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

March 3, 2004

Members present: Carlson, Marvin, Carroll, Sunderman, Krieser, Taylor, and Larson;  
Bills-Strand declaring a conflict of interest; Pearson absent.

Staff recommendation: Conditional approval.

Ex Parte Communications: None.

This application was removed from the Consent Agenda and had separate public hearing due to the conflict of interest declared by Commissioner Bills-Strand.

Proponents

1. **Scott Sullivan** appeared on behalf of the applicant to answer any questions.

There was no testimony in opposition.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

March 3, 2004

Marvin moved to approve the staff recommendation of conditional approval, seconded by Krieser and carried 7-0: Carlson, Marvin, Carroll, Sunderman, Krieser, Taylor and Larson voting 'yes'; Bills-Strand declaring a conflict of interest; Pearson absent.

Note: This is final action, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.

**WAIVER NO. 04003**  
**TO EXTEND THE PERIOD OF TIME**  
**FOR PLANTING OF STREET TREES**  
**ON PROPERTY GENERALLY LOCATED**  
**AT N.W. 12<sup>TH</sup> STREET AND KINGBIRD ROAD.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

March 3, 2004

Members present: Carlson, Marvin, Carroll, Sunderman, Krieser, Taylor, Larson and Bills-Strand; Pearson absent.

Staff recommendation: Conditional approval.

Ex Parte Communications: None.

This application was removed from the Consent Agenda and had separate public hearing at the request of the Planning staff.

Tom Cajka of Planning staff clarified that the applicant had also requested a reduction in the surety amount on the original final plat; however, instead of tying it to an exact dollar amount, the resolution states that, "the surety provided to guarantee street trees may be reduced to an amount sufficient to guarantee the planting of the remaining street trees required to be planted in the Original Addition". Cajka explained that the reason for this is that the original final plat is now eight years old so the surety amount was based on the requirement for street trees at that time.

Marvin inquired as to the difference in cost. Cajka believes that the Parks Department uses the standard of \$220 per tree. There are 23 trees required to be planted, which would be \$5,060.00 versus \$4,965.00.

Proponents

1. **Mike Johnson** appeared on behalf of the applicant to answer any questions.

There was no testimony in opposition.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

March 3, 2004

Taylor moved approval, seconded by Krieser and carried 8-0: Carlson, Marvin, Carroll, Sunderman, Krieser, Taylor, Larson and Bills-Strand voting 'yes'; Pearson absent.

Note: This is final action, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.

**SPECIAL PERMIT NO. 04006**

**FOR AUTHORITY TO SELL ALCOHOLIC BEVERAGES**

**FOR CONSUMPTION OFF THE PREMISES,**

**ON PROPERTY GENERALLY LOCATED**

**AT N. 27<sup>TH</sup> STREET AND DUDLEY STREET.**

**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

March 3, 2004

Members present: Carlson, Marvin, Carroll, Sunderman, Krieser, Taylor, Larson and Bills-Strand; Pearson absent.

Staff recommendation: Denial.

Ex Parte Communications: None.

Brian Will of Planning staff submitted additional information for the record, consisting of four letters in opposition.

Proponents

**1. Pat O'Brien** appeared on behalf of the applicant, **Overstreet, Inc.** Lakisha Overstreet is the applicant, who is currently under a conditional lease with T's Stop and Shop. If this application is approved, she will enter into a lease for the entire premises and will apply for an off-sale liquor license to sell beer at this location and she will be operating this facility. She has been the primary person responsible for the operation of this location for the last year, and substantially responsible for the operation for the last three years. She was also operating the facility on S. 14<sup>th</sup> for part of that time, which is now a stand-alone gas station without convenience items.

O'Brien went on to state that T's Stop and Shop, being the current owner of the property, has reviewed the staff recommendation and the proposed conditions of approval, if the Commission votes to approve this special permit. For the most part, the applicant and owner agree with the conditions. The only reservation would be the hours of operation. The applicant would prefer 7:00 a.m. to 11:00 p.m. as opposed to 7:00 a.m. to 10:00 p.m. The suggested revisions to the site plan have been completed and the applicant is prepared to resubmit the revised site plan. With respect to the lighting requirements, it is O'Brien's understanding from a conversation with the Planning staff this morning, that the staff is not sure they are in compliance with the lighting standards; however, the applicant believes they are in compliance, including the canopy lighting. This is a recently constructed facility that has met all code conditions.

O'Brien further advised the Commission that T's Stop and Shop has received an award for neighborhood improvement for replacing the gas station that had been at this location for many years. Some residences located on part of the lot were run down and had deteriorated. That location was rebuilt with a new building and new pumps; the old underground tanks were repaired and it has become a thriving business on N. 27<sup>th</sup> Street. This facility at this location, however, has had one glaring deficiency, and that is that it is competing with other convenience stores in that locality which have off-sale beer licenses, including a Kwik Shop 1.5 blocks away, another shop on 33<sup>rd</sup> & \* Holdrege and another in the vicinity. It has become apparent that in order to compete in this business you must have the ability to sell off-sale beer and that is the reason for this application.

With respect to the area in general, O'Brien pointed out that the authors of the letters in opposition identify themselves as members of the neighborhood association, but the applicant has talked to the neighborhood association. The neighborhood association is neutral and has

taken no position on this matter. O'Brien urged that the individual complaints should be treated as individual complaints and not as neighborhood association complaints.

O'Brien then discussed the residential properties located in this vicinity. The house immediately to the north is a single family residential property, occupied by a long time tenant, and the convenience store has had good relationships with that tenant. There is a 6' fence screening the property from the convenience store gas station. The applicant is not opposed to additional plantings if the landlord is willing to have the plantings in that location for additional screening.

With regard to the residential area to the west that fronts onto 26<sup>th</sup> Street, O'Brien pointed out that Mr. T's fronts onto 27<sup>th</sup> Street and abuts the alley between 26 and 27<sup>th</sup> Street. He believes that the construction of the fence described in the application as well as the car wash facility abutting the alley does provide significant screening from the neighborhood and isolates the convenience store from any of the neighborhood problems that have been identified. No. 27<sup>th</sup> is primarily a commercial corridor with businesses operating exactly as Mr. T's is operating except for the disadvantage of not selling beer. O'Brien believes that this applicant has provided a better and higher quality of service and is unable to compete on a equal basis without this special permit.

Taylor confirmed that the convenience store with which this facility is competing is on the same street and to the south. O'Brien concurred. It is the Kwik Shop to the south.

#### Opposition

1. **Renee Malone**, 1408 N. 26<sup>th</sup> Street, past president of **Clinton Neighborhood Association** and current Vice-President and Board member, testified in opposition. She stated that this application was never brought to the Clinton Neighborhood Association to see if they were in favor or against. The only notice received by the neighborhood association was that sent out by the Planning Department. She lives approximately one block from this facility and she knows that there is numerous opposition in the neighborhood. Malone suggested that part of the reason for the requirements for special permits is because we do not want a liquor store within less than 100' of a residence. The traffic is already very heavy. The cars from Mr. T's pull out onto Dudley and onto 27<sup>th</sup>. She is concerned about more traffic congestion. There was previously a bar across the street at 33<sup>rd</sup> & Holdrege which caused continuous problems when it was selling off-sale. There were beer cans in the residents' yards, public drunkenness, etc. Pan handling and crime could increase. Revitalization projects have been done on North 27<sup>th</sup> Street and the neighbors are trying to keep the liquor stores to a limit. They desire to make this more of a family oriented neighborhood.

Malone is also concerned about this being brought as a special permit under another name as management because the owner has a felony record and would not be able to get a license. Regardless, there are enough liquor outlets in the area. This area already has a lot

of trouble with transients coming from the railroad tracks north of Holdrege, and this just creates one more spot closer for them to wander down into the neighborhood.

Krieser inquired as to the distance from this facility to the closest residential property. Malone believes it would be less than 30' to the north. There are also houses on the west. The Kwik Shop is across the street and down the road.

Larson inquired about the former bar across the street (J Ryans) as to whether they had off-sale. Malone clarified that they had off-sale in addition to the bar.

Response by the Applicant

O'Brien clarified that the applicant is Overstreet, Inc., a corporation, the sole stockholder of which is Lakisha Overstreet. She will also be the applicant for the liquor license. As part of the application for liquor license, she will file the lease to be entered into between T's Stop and Shop and Lakisha Overstreet. O'Brien took offense to the reference to the felony conviction of Terry Rupert being used in testimony by the opposition. Mr. Rupert wounded an individual in self defense. He was placed on probation and has successfully completed every requirement imposed. He was released from probation early; he started T's Stop and Shop and has made the improvements to this neighborhood that vastly improved the appearance and the manner in which this neighborhood has operated. Mr. Rupert has received awards and recognition throughout his career as the minority small business man who sought to improve himself and this community. Aspersions to his character should be rejected by this Commission in considering this special permit.

O'Brien further rebutted, stating that this is a lawful business that is being carried on in an area that is mostly commercial in nature. Certainly, the houses on 26<sup>th</sup> Street and to the east, and on 28<sup>th</sup> Street and to the west constitute neighborhood groups, but there is absolutely no indication that anyone can bring to this Commission that T's Stop and Shop has ever contributed to any of the negative impacts to which the opposition testified. T's Stop and Shop has an excellent relationship with all law enforcement officers and has always responded to whatever the city has sought in terms of improvements in the neighborhood. O'Brien believes that a special permit in these circumstances certainly meets the letter of the requirements for a special permit, but is also an appropriate special permit, at least as appropriate as the permit on 48<sup>th</sup> & Randolph and the Valentino's permit on 48<sup>th</sup> & Hwy 2. This is even more clearly a commercial area. This is even more clearly a situation where business operators must be treated fairly. We must put them on an even basis with their direct competition within very short distances. This facility has no connection with the J Ryans bar referred to by the opposition. This is an applicant who has demonstrated her competence in operating two convenience stores for a long period of time. She has successfully completed a number of requirements for these kinds of facilities and will comply with all rules and regulations of the state and the city.

Staff questions

Bills-Strand inquired as to the distance comparisons with the Valentino's-To-Go and the 48<sup>th</sup> & Randolph location. Brian Will of Planning staff stated that generally, the proximity to the residential district is similar. The distinction that staff tried to make is the orientation of the adjacent residences, that being those residences to the west with doorways and pedestrian traffic facing onto Dudley Street. At 48<sup>th</sup> & Randolph, the residence to the south was approximately 30 feet, and the residential district to the east was approximately 50'. At 48<sup>th</sup> & Hwy 2, it was approximately 50' to the residential district, but over 100' to the residences.

Marvin inquired whether the statement that this facility is 30' from the residence is correct. Will referred to the aerial photograph. Immediately to the north, there is a residence approximately 30' from the licensed premises.

Bills-Strand inquired as to the distance from the residential lot line to the public entrance to the building. Will stated that the distance from the zoning district line to the public doorway would be approximately 46' from the R-4 to the west, and if you look at the site plan, there appears to be one main entrance on the east half of the building. It looks like there is a doorway on the west half of the building. O'Brien clarified that the only public doorway faces to the south toward the gas pumps. There is no other public doorway, and it is on the opposite side of the building to the residential house to the north. There is a car wash and the 6' fence between the building and the north house. To the west there is fencing and the car wash. There is another commercial building across the street on Dudley. There is no residence that opens directly to the public door. Given it is 46' from the building to the R-4 district, Will would guess that it is less than 100' to the public entrance, but probably fairly close.

Sunderman wondered whether there is adequate parking. Will stated that the parking shown complies with the zoning ordinance for this district. It is noted in the staff report that we would typically find parking in excess of what is being shown for convenience stores, but strictly speaking, the required off-street parking is provided.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

March 3, 2004

Carlson moved to deny, seconded by Marvin.

Carlson noted the discussions about competition, but the Commission is only reviewing this application. Situations and circumstances are always going to be different. This use ought to be 100' away from the residential district and residential use, and, if not, they need to provide mitigation. This application certainly does not meet the distance requirement and staff indicates that they have not provided sufficient mitigation for various reasons. Because of the proximity and the site layout, we do not have sufficient mitigation and he is opposed.

Larson will vote against denial because he believes there is proper mitigation and he believes the complaint about the previous establishment across the street was primarily based on the fact that it was on-sale rather than off-sale, and he thinks there is a big difference.

Taylor believes that Mr. T's is an excellent facility for gas. He didn't even know the Kwik Shop up the street existed, so he does not believe it is a competition problem. The Planning Commission recommended denial of the 48<sup>th</sup> & Randolph special permit because of the concerns of the neighborhood. He also has concerns for this area. He is not concerned about anyone's reputation. He understands competition but for this neighborhood, because it is depressed and because of the proximity of the neighbors, he must vote to deny.

Marvin stated that he will also support denial because the distance is similar to 48<sup>th</sup> & Randolph, which the Commission rejected, and because Mr. O'Brien described it as a thriving business without alcohol sales. He is sure alcohol sales would add revenue, but given the support it has received from the community, he does not believe it will harm the business to leave it the way it is.

Carroll stated that he will also vote to deny. Who runs the establishment has nothing to do with it. This is clearly not 100' away on two sides. It is tucked into the neighborhood. It does not meet the ordinance requirements today, and he does not believe it can be mitigated sufficiently. There is alcohol down the street, but that's just business. He does not believe we can change the mitigation and the site to improve it to sell alcohol. It is a tough place to get into as it is today, and adding alcohol would increase the traffic. It just does not meet the ordinance that it is in place.

Motion to deny carried 6-2: Carlson, Marvin, Carroll, Sunderman, Krieser and Taylor voting 'yes'; Larson and Bills-Strand voting 'no'; Pearson absent. This is a recommendation to the City Council.

**COMPREHENSIVE PLAN AMENDMENT NO. 03007**  
**TO AMEND THE 2025 COMPREHENSIVE PLAN**  
**TO REMOVE A STATEMENT RELATING TO**  
**FUTURE DETERMINATION OF COUNTY IMPACT FEES.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

March 3, 2004

Members present: Carlson, Marvin, Carroll, Sunderman, Krieser, Taylor, Larson and Bills-Strand; Pearson absent.

Staff recommendation: Approval of alternative language as follows:



"The study on the economics of acreage development has been completed. The County Board should proceed with cost-reducing policies as suggested in the study: controlling densities, focusing most new development along existing paved roads, and declining to pave road segments in perimeter areas that have low volumes and serve mostly out of county residents. However, until the legality of impact fees in Nebraska is determined by the courts or by new legislation, the County Board should not proceed with debating their merits or enacting them."

Ex Parte Communications: None.

### Opposition

**1. Ray Stevens**, 3411 Hansen Court, appeared on behalf of the **Lancaster County Board of Commissioners**. The County Board has discussed the Comprehensive Plan for over two years. This amendment is not the request nor the recommendation of the County Board.

Mike DeKalb of Planning staff explained that the County Board's request was to add language such that, "An independent study to quantify and qualify the positive and negative economics of acreage development will be performed." DeKalb concurred that the alternative language recommended by the staff (as set forth above) is certainly not the request of the County Board.

Stevens further testified that during the course of the Comprehensive Plan review and adoption, the County Board had a question about the language on page F71. The County Board made a request that the language be changed, as set forth on p.76 of today's agenda. However, that language is now obsolete because the study has been completed and the results have been issued. The County Board has not taken any formal action to accept those results or to endorse those results. They are still going through the process of analyzing and reviewing and continuing discussions about all three studies done at the conclusion of the adoption of the Comprehensive Plan. In order to make the language so that it is not obsolete, the entire paragraph on p. F71 could be deleted; however, Stevens stated that to be only his opinion. He indicated that he has talked to two of the County Commissioners today, but pointed out that this proposed alternate language was just given to the County Board yesterday, March 2<sup>nd</sup>, so the County Board has not had ample opportunity to review and discuss the proposed language. Stevens suggested that this amendment has been "hijacked" by the Planning Department and they have inserted their own language. He requested that the Planning Department alternate language be denied and that the Commission consider the original language of the County Board. A compromised alternative might be to delay this and allow the County Board to see if this is the language to which they would agree.

Staff questions

Marvin Krout, Director of Planning, suggested that elimination of the entire paragraph would also eliminate the discussion about the cost of rural services; however, it would make more sense than the obsolete language. Krout apologized that the County Board did not receive this amendment until yesterday. It was sent to the County Administrator for the County Board last Thursday.

In terms of an alternative recommendation, Krout stated that there was no attempt to do anything illegal like hijacking. The Planning staff was intending to give the Commission an alternative to consider and he believes that it is the prerogative of the Planning Commission to consider any amendments to the language at this time.

Krout believes that a delay to discuss this with the County Board would be appropriate. In previous meetings it appeared that of the three studies and three issues that were discussed, it was the cost of services that was most discussed and the three groups (County Board, City Council and Planning Commission) wanted to talk about it further. That is why the staff believed the alternative language would be acceptable. Marvin suggested that this amendment be deferred until after the next meeting of the City-County Common on April 5, 2004.

Larson moved to defer, with continued public hearing and administrative action scheduled for April 14, 2004, seconded by Taylor and carried 8-0: Carlson, Marvin, Carroll, Sunderman, Krieser, Taylor, Larson and Bills-Strand voting 'yes'; Pearson absent.

**STREET & ALLEY VACATION NO. 03023**  
**TO VACATE THE NORTH 10' OF Q STREET**  
**GENERALLY LOCATED AT N. 8<sup>TH</sup> STREET & "Q" STREET.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

March 3, 2004

Members present: Carlson, Marvin, Carroll, Sunderman, Krieser, Taylor, Larson and Bills-Strand; Pearson absent.

Staff recommendation: A finding that the proposal is not in conformance with the Comprehensive Plan.

Ex Parte Communications: None.

Greg Czaplewski of Planning staff submitted an electronic mail message from the applicant requesting indefinite postponement in order to meet with the city agencies. Czaplewski advised that he also spoke with the applicant and it was agreed to request a deferral until April 14, 2004, as opposed to indefinite.

The applicant was not present.

There was no testimony in opposition.

Carlson moved to defer, with continued public hearing and administrative action scheduled for April 14, 2004, seconded by Taylor and carried 8-0: Carlson, Marvin, Carroll, Sunderman, Krieser, Taylor, Larson and Bills-Strand voting 'yes'; Pearson absent.

**SPECIAL PERMIT NO. 1583A,**  
**TO ALLOW A COMMERCIAL PARKING LOT**  
**IN A RESIDENTIAL DISTRICT,**  
**ON PROPERTY GENERALLY LOCATED**  
**AT SOUTH 17<sup>TH</sup> STREET AND GARFIELD STREET.**  
**CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:**

March 3, 2004

Members present: Carlson, Marvin, Carroll, Sunderman, Krieser, Taylor, Larson and Bills-Strand; Pearson absent.

Staff recommendation: Denial.

Ex Parte Communications: Commissioner Marvin advised that he had lunch with the architect and saw some drawings. Commissioner Carlson advised that he lives in the Near South Neighborhood, but has received no information other than what the Commission has received.

Greg Czaplewski of the Planning staff submitted additional information for the record, including four electronic mail messages in opposition.

Proponents

**1. Paul Peter** appeared on behalf of the **Raybould Family Partnership**, the entity owning the property, requesting that this Commission favorably consider approving this special permit for additional parking at Russ's Market.

Peter described the application area on the map, referring to Lot 8, which is the subject property. Just to the north is a parking lot. Diagonally in the "upper hand corner" is Russ's Market. The "vertical line represents the dividing line" between the B-3 business zoning district and the R-6 to the east. Beginning in the early 1970's, the company started to undertake an expansion project, including expansion of the grocery and parking lot. Special Permits No. 640 and 640A were previously approved for expansion of parking into the residential district. As a part of that ongoing strategic plan, the applicants then received Special Permit No. 1052, approved by the City Council in 1983, again expanding to the east

and to the south for parking. Special Permit No. 1052A was approved by the City Council in 1984, again to allow parking connecting to the contiguous property. Around that time, the applicants began some improvements and expansion of the store itself. There was a consolidated special permit approved in 1986 to clean some of this up. Special Permit No. 1583 was approved by the City Council in 1995, which involved two properties that had two homes which was improved for parking and those properties were razed. There is a contiguous line going from the north to south which is used primarily for parking. Lot 8 is the last southeast corner and the subject of this application.

This property was owned for years and years by William and Ernestine Yonker. They were patrons of the grocery store on 17<sup>th</sup> & Washington. In the mid-1980's, Mrs. Yonker began discussions with the Rayboulds to sell the property to the Raybould family, and there was a purchase and sale agreement in 1987, for the acquisition of that property. Shortly after the contract was signed, Mr. Yonker became ill and the closing did not occur and it was subsequently converted to an option agreement because Mrs. Yonker was not wanting to move at that time. At some point in time, Mr. Yonker did pass away and Mrs. Yonker continued to live in the home for 16 years and she passed away in 2002, at which time the Rayboulds exercised the option and acquired the property in 2002-03. That property has been targeted to be a part of the special permit application going back to 1995. The property is contiguous and, but for the Rayboulds' benevolence in making accommodations to the Yonkers, that property would have been a part of the previous special permit. This application is to close the gap. The applicant believes that approval of this application satisfies the strategic plan which was begun years ago.

In 1995, the staff recommended denial and there was neighborhood opposition, but the Commission ultimately agreed to recommend approval. This special permit is truly trying to "write the final chapter" on the total property. It completes the southeast corner. The Rayboulds believe they have been reasonable stewards of this property for the purpose of the parking. Peter then showed a picture of the landscaping that has been done to satisfy the needs of the neighborhood.

Peter then acknowledged that this matter was originally set for hearing in May, 2003. The applicant has continued efforts to discuss the matter with the neighborhood association. They have met at least five different times. The Rayboulds have made every effort to take the neighbors' comments and suggestions into consideration.

### Opposition

**1. Greg McCown**, 1970 B Street, President of Near South Neighborhood Association, agreed with the staff recommendation of denial. There are many issues surrounding this action. Near South is traditionally very reluctant to support tearing down the neighborhood homes. They are opposed to tearing down the Yonker home because it provides a physical

bearer and shields the neighbors from lights and noise. It also helps to protect the market value of neighborhood homes. There is great uncertainty as to where the parking lot may expand next. There is no demonstrated need for additional parking. The existing south lot is used mostly by employees and is never near full. Instead of parking, McCown submitted that the real issue is the future expansion needs of Russ's Market. Russ's (or B&R) has grown as a company as the Near South neighborhood has matured. They have been good neighbors. The Near South Neighborhood Association is supportive of efforts to improve the store and the neighborhood association remains interested in discussing their long term plans. If razing of the house at 1744 Garfield is to create additional land for future store expansion, the neighborhood association would like to focus on that instead of focus on a parking need that does not exist. The neighborhood would like to help sculpt the plans if long term expansion is the real issue.

2. McCown also read a letter into the record from **Keith Dubas**, 1712 E Street, in opposition, adding that the house is structurally sound and habitable; the Near South Neighborhood Association has requested a master plan from Russ's that would show their long range intent for the site, but none has been received; no professional study has been done to determine if additional parking is currently required.

3. **Clint Nelson**, 1810 Garfield, testified in opposition and referred to the photograph shown by the applicant depicting the landscaping in front of the parking lot existing on the two properties to the west. Kelvin Oliver would be willing to bring photographs of the empty parking on the two lots west of the house. To tear down a perfectly good house and put in paving is not necessary.

4. **Kevin Cypher**, 1800 Garfield, who lives next to the property, testified in opposition. He does most of his shopping at Russ's and there are always parking spaces available. He has never seen this parking lot completely full in 40 years. This would be an eyesore for the neighborhood and would infringe on his quality of living and the value of his property.

5. **Rodney Pillar**(sp), **J & C Properties**, 1801 Garfield, testified in opposition, stating that the parking lot is never full. They hold car washes in this parking lot in the summertime. It will have an impact on the property values. He anticipates that in the future, the applicant will eventually attempt to make an entrance on Garfield Street because of all the parking, which will also negatively impact the value of the residential properties.

#### Response by the Applicant

Peter clarified that this application for a special permit does not pertain to whether the house is kept or torn down. That is not why we are here today. His client could tear the house down now. With regard to the "master plan", the applicant has had dialog with the neighbors but the applicant does not have a "great master plan—it is always evolving". They are not trying to hide anything.

Peter reiterated that this application is to complete all of the links that started in 1973. This would have been presented in 1995 but for the situation with the Yonkers. This application seeks the opportunity to complete that last corner. At the end of the day, the applicant's obligation is to show that the municipal code has been met and Peter believes this has been done.

Bills-Strand inquired about a potential entrance on Garfield. Peter stated "certainly not". In fact, this special permit limits the ability to do that on anything other than a major arterial. Carlson inquired about a parking study. Peter acknowledged that the applicant has not done a parking study at this juncture.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

March 3, 2004

Larson moved approval, with conditions. Motion failed for lack of a second.

Marvin moved to deny, seconded by Taylor.

For lack of a need for additional parking, Marvin does not see the reason for this permit. He agreed that it is their right to tear the house down, but they need to demonstrate the need for the parking.

Motion to deny carried 5-3: Carlson, Marvin, Carroll, Sunderman and Taylor voting 'yes'; Krieser, Larson and Bills-Strand voting 'no'; Pearson absent. This is a recommendation to the City Council.

There being no further business, the meeting was adjourned at 2:30 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on March 17, 2004.